

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1900

Introduced by Senator Burton

March 4, 2004

An act to add Section 76104.6 to the Government Code, to amend Section 1405 of, and to add Section 296.3 to, the Penal Code, relating to forensic DNA.

LEGISLATIVE COUNSEL'S DIGEST

SB 1900, as amended, Burton. Forensic DNA.

Existing law provides for DNA collection and testing in connection with forensic identification, as specified.

This bill would impose a fee of \$1.50 per every \$10 of a fine, penalty or forfeiture collected by a county, as specified. The funds collected would be deposited by the county into a DNA Collection Reimbursement Fund. ~~Ninety~~ *Eighty* percent of those funds would be transferred to the Controller for deposit in the state DNA Identification Fund for use, upon appropriation, to support DNA testing and analysis, as specified. Ten percent of the transferred funds would be deposited in the state DNA Innocence Protection Fund, for disbursement, upon appropriation by the Legislature, to entities supporting the California Innocence Protection Program, as specified. The funds remaining in the county DNA Collection Reimbursement Fund would be used to reimburse local law enforcement agencies and other specified entities for costs of collecting and analyzing DNA forensic samples, as specified. The bill would also require an annual report, as specified,

from the county board of supervisors to the Legislature and the Department of Justice regarding the amount of fines collected and allocated pursuant to the provisions of the bill.

By imposing additional reporting duties on county governments, this bill would impose a state-mandated local program.

The bill would also authorize a defendant ~~or other specified persons~~ to petition the court for an order ~~directing the appropriate law enforcement or prosecutorial agency to compare biological evidence from a crime scene~~ *comparing a valid forensic identification profile that excludes the defendant, victim, and other known persons*, against DNA and forensic identification databank profiles, as specified.

The bill would further provide that if the result of DNA testing does not identify the person requesting the testing or the victim the court ~~would be required to~~ *may* vacate the judgment against the person and order a new trial for the defendant.

By imposing additional burdens on local prosecuting entities, this bill would impose a state-mandated local program.

The bill would provide that Section 1 of the bill would only become operative if SB 1737 is chaptered and becomes operative. The bill would further provide that funding provided by Section 1 of the bill would be used for the purposes of SB 1737.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 76104.6 is added to the Government
- 2 Code, to read:

76104.6. (a) There shall be levied an additional penalty of one dollar and fifty cents (\$1.50) for every ten dollars (\$10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. The board of supervisors shall establish in the county treasury a DNA Collection Reimbursement Fund into which the moneys collected pursuant to this section shall be deposited. The moneys collected shall be allocated pursuant to subdivision (b).

(b) (1) The moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

(2) (A) On the last day of each calendar quarter, the county treasurer shall transfer 90 80 percent of the moneys in the county's DNA Collection Reimbursement Fund to the Controller. The Controller shall deposit 90 80 percent of the moneys transferred from the county into the state's DNA Identification Fund, which is hereby established in the State Treasury. ~~The~~ *Notwithstanding the percentage amount established in this subparagraph, the Legislature may provide for a different percentage in the Budget Act. No later than March 1, 2010, the Legislative Analyst's Office shall review and make recommendations to the Joint Legislative Budget Committee on the appropriate division of funds pursuant to this subparagraph.*

(B) *The* Controller shall deposit 10 percent of the moneys transferred from the county into the DNA Innocence Protection Fund, which is hereby established in the State Treasury, but if the amount of money in the fund exceeds two million dollars (\$2,000,000) the excess shall be deposited into the DNA Identification Fund.

(3) Funds remaining in the county's DNA Collection Reimbursement Fund shall only be used to:

1 (A) Reimburse the sheriff or other law enforcement agencies
2 for the cost of collecting DNA specimens, samples, and print
3 impressions pursuant to this chapter.

4 (B) Reimburse the sheriff, police, district attorney, and
5 regional crime laboratories for expenditures and administrative
6 costs made or incurred in connection with the processing, analysis,
7 tracking, and storage of DNA crime scene samples from cases in
8 which DNA evidence would be useful in identifying or
9 prosecuting suspects, including the procurement of equipment and
10 software for the processing, analysis, tracking, and storage of
11 DNA crime scene samples from unsolved cases.

12 (4) The state's DNA Identification Fund shall be administered
13 by the Department of Justice. Funds in the state's DNA
14 Identification Fund, upon appropriation by the Legislature, shall
15 only be used to support DNA collection and testing conducted by
16 the Department of Corrections and the Department of Justice.

17 (c) On or before April 1, 2006, and annually thereafter, the
18 Board of Supervisors of each county shall submit a report to the
19 Legislature and the Department of Justice. The report shall include
20 the total amount of fines collected and allocated pursuant to this
21 section, and the amounts expended by the county for each program
22 authorized pursuant to paragraph (3) of subdivision (b) of this
23 section. The Department of Justice shall make the reports publicly
24 available on the department's Web site.

25 (d) All requirements imposed on the Department of Justice
26 pursuant to this measure are contingent upon the availability of
27 funding and are limited by revenue, on a fiscal year basis, received
28 by the Department of Justice pursuant to this section and any
29 additional appropriation approved by the Legislature for purposes
30 related to implementing this measure.

31 (e) The *funds in the* DNA Innocence Protection Fund shall be
32 ~~administered by the Controller, which~~ *available*, upon
33 appropriation by the Legislature, ~~shall disburse the funding to the~~
34 *Office of Emergency Services for disbursal* to qualified entities, in
35 equal proportions, pursuant to this subdivision on a quarterly
36 basis. Funds in the DNA Innocence Protection Fund shall be used
37 *solely* for the purpose of supporting the California Innocence
38 Protection Program as follows:

39 (1) Two-thirds of the moneys in the fund, not to exceed one
40 million two hundred fifty thousand dollars (\$1,250,000) annually,

1 shall be distributed to private nonprofit organizations meeting
 2 guidelines established by the American Bar Association for
 3 operating legal clinics using law students. Moneys shall only be
 4 used for the purpose of representing persons with a California
 5 conviction who are attempting to establish their actual innocence
 6 through the use of DNA and other forensic testing. Only those
 7 entities that have been in existence for at least two years prior to
 8 the effective date of this section shall be eligible to receive
 9 funding. The entity shall provide written certification to the
 10 Controller that it meets the requirements of this subdivision at the
 11 beginning of each fiscal year. In the event there is more than one
 12 qualifying entity, the Controller shall apportion the funds in equal
 13 proportions. Entities receiving funding under this program shall
 14 report to the Legislature no later than April 1, 2006, and annually
 15 thereafter to include detailed expenditure reports on the use of
 16 funds provided under this paragraph and on the number of requests
 17 received and the number of cases in which any of the following
 18 have occurred:

- 19 (A) A preliminary investigation was conducted.
- 20 (B) A full investigation was conducted and DNA testing was
- 21 sought.
- 22 (C) The appellant was represented in court proceedings or an
- 23 attempt was made to vacate a conviction.
- 24 (D) An appellant's conviction was vacated or overturned as a
- 25 direct result of the representation by the entity or attorney.
- 26 (2) One-third of the moneys in the fund, not to exceed seven
- 27 hundred fifty thousand dollars (\$750,000) annually, shall be
- 28 allocated to a private nonprofit organization composed of local
- 29 prosecutors which shall use these funds for the exclusive purpose
- 30 of providing a statewide program for district attorneys and law
- 31 enforcement on education and training in ethics and the proper use
- 32 and storage of DNA evidence including technical assistance to
- 33 local agencies for DNA purposes. Entities receiving funding under
- 34 this paragraph shall report to the Legislature no later than April 1,
- 35 2006, and annually thereafter, on the use of the funds, including
- 36 a detailed expenditure report, a description of the education and
- 37 training conducted, the number of persons participating, and any
- 38 other uses hereby permitted.

39 SEC. 2. Section 296.3 is added to the Penal Code, to read:

~~296.3.— A person who is a defendant in a criminal case, or any person who has filed a motion pursuant to Section 1405, shall, at any time, have the right to petition the court to order the appropriate law enforcement or prosecutorial agency to compare biological evidence from a crime scene against the DNA databank profiles when the biological evidence is not identified as belonging to, or is inconclusive as to, the petitioner, victim, or other known person.~~

296.3. Prior to trial, where the prosecution has developed a valid forensic identification profile, including DNA profiles, that excludes the defendant, the victim, and other known persons, the defendant shall have the right to petition the court to have the profile compared and checked against available DNA and forensic identification databanks and databases.

SEC. 3. Section 1405 of the Penal Code is amended to read:

1405. (a) A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing.

(b) (1) An indigent convicted person may request appointment of counsel to prepare a motion under this section by sending a written request to the court. The request shall include the person's statement that he or she was not the perpetrator of the crime and that DNA testing is relevant to his or her assertion of innocence. The request also shall include the person's statement as to whether he or she previously has had counsel appointed under this section.

(2) If any of the information required in paragraph (1) is missing from the request, the court shall return the request to the convicted person and advise him or her that the matter cannot be considered without the missing information.

(3) (A) Upon a finding that the person is indigent, he or she has included the information required in paragraph (1), and counsel has not previously been appointed pursuant to this subdivision, the court shall appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.

(B) Upon a finding that the person is indigent, and counsel previously has been appointed pursuant to this subdivision, the

1 court may, in its discretion, appoint counsel to investigate and, if
2 appropriate, to file a motion for DNA testing under this section and
3 to represent the person solely for the purpose of obtaining DNA
4 testing under this section.

5 (4) Nothing in this section shall be construed to provide for a
6 right to the appointment of counsel in a postconviction collateral
7 proceeding, or to set a precedent for any such right, in any context
8 other than the representation being provided an indigent convicted
9 person for the limited purpose of filing and litigating a motion for
10 DNA testing pursuant to this section.

11 (c) (1) The motion shall be verified by the convicted person
12 under penalty of perjury and shall do all of the following:

13 (A) Explain why the identity of the perpetrator was, or should
14 have been, a significant issue in the case.

15 (B) Explain, in light of all the evidence, how the requested
16 DNA testing would raise a reasonable probability that the
17 convicted person's verdict or sentence would be more favorable if
18 the results of DNA testing had been available at the time of
19 conviction.

20 (C) Make every reasonable attempt to identify both the
21 evidence that should be tested and the specific type of DNA testing
22 sought.

23 (D) Reveal the results of any DNA or other biological testing
24 that was conducted previously by either the prosecution or
25 defense, if known.

26 (E) State whether any motion for testing under this section
27 previously has been filed and the results of that motion, if known.

28 (2) Notice of the motion shall be served on the Attorney
29 General, the district attorney in the county of conviction, and, if
30 known, the governmental agency or laboratory holding the
31 evidence sought to be tested. Responses, if any, shall be filed
32 within 60 days of the date on which the Attorney General and the
33 district attorney are served with the motion, unless a continuance
34 is granted for good cause.

35 (d) If the court finds evidence was subjected to DNA or other
36 forensic testing previously by either the prosecution or defense, it
37 shall order the party at whose request the testing was conducted to
38 provide all parties and the court with access to the laboratory
39 reports, underlying data, and laboratory notes prepared in
40 connection with the DNA or other biological evidence testing.

1 (e) The court, in its discretion, may order a hearing on the
2 motion. The motion shall be heard by the judge who conducted the
3 trial, or accepted the convicted person's plea of guilty or nolo
4 contendere, unless the presiding judge determines that judge is
5 unavailable. Upon request of either party, the court may order, in
6 the interest of justice, that the convicted person be present at the
7 hearing of the motion.

8 (f) The court shall grant the motion for DNA testing if it
9 determines all of the following have been established:

10 (1) The evidence to be tested is available and in a condition that
11 would permit the DNA testing requested in the motion.

12 (2) The evidence to be tested has been subject to a chain of
13 custody sufficient to establish it has not been substituted, tampered
14 with, replaced or altered in any material aspect.

15 (3) The identity of the perpetrator of the crime was, or should
16 have been, a significant issue in the case.

17 (4) The convicted person has made a prima facie showing that
18 the evidence sought to be tested is material to the issue of the
19 convicted person's identity as the perpetrator of, or accomplice to,
20 the crime, special circumstance, or enhancement allegation that
21 resulted in the conviction or sentence.

22 (5) The requested DNA testing results would raise a reasonable
23 probability that, in light of all the evidence, the convicted person's
24 verdict or sentence would have been more favorable if the results
25 of DNA testing had been available at the time of conviction. The
26 court in its discretion may consider any evidence whether or not
27 it was introduced at trial.

28 (6) The evidence sought to be tested meets either of the
29 following conditions:

30 (A) The evidence was not tested previously.

31 (B) The evidence was tested previously, but the requested DNA
32 test would provide results that are reasonably more discriminating
33 and probative of the identity of the perpetrator or accomplice or
34 have a reasonable probability of contradicting prior test results.

35 (7) The testing requested employs a method generally accepted
36 within the relevant scientific community.

37 (8) The motion is not made solely for the purpose of delay.

38 (g) If the court grants the motion for DNA testing, the court
39 order shall identify the specific evidence to be tested and the DNA
40 technology to be used. The testing shall be conducted by a

laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

(h) (1) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(2) If the result of any testing ordered pursuant to this section ~~does not identify the person requesting the testing or the victim the~~ *exculpates the defendant*, the court ~~shall~~ *may* enter an order vacating the prior judgment of guilt and order a new trial.

(i) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the district attorney or Attorney General shall not be borne by the convicted person.

(2) In order to pay the state's share of any testing costs, the laboratory designated in subdivision (g) shall present its bill for services to the superior court for approval and payment.

(j) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. The petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeal. In a capital case, the petition shall be filed in the California Supreme Court. The court of appeal or California Supreme Court shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.

(k) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is

1 necessary in the interests of justice to give priority to the DNA
2 testing, a DNA laboratory shall be required to give priority to the
3 DNA testing ordered pursuant to this section over the laboratory's
4 other pending casework.

5 (l) DNA profile information from biological samples taken
6 from a convicted person pursuant to a motion for postconviction
7 DNA testing is exempt from any law requiring disclosure of
8 information to the public.

9 (m) Notwithstanding any other provision of law, the right to
10 file a motion for postconviction DNA testing provided by this
11 section is absolute and shall not be waived. This prohibition
12 applies to, but is not limited to, a waiver that is given as part of an
13 agreement resulting in a plea of guilty or nolo contendere.

14 (n) The provisions of this section are severable. If any
15 provision of this section or its application is held invalid, that
16 invalidity shall not affect other provisions or applications that can
17 be given effect without the invalid provision or application.

18 SEC. 4. Notwithstanding Section 17610 of the Government
19 Code, if the Commission on State Mandates determines that this
20 act contains costs mandated by the state, reimbursement to local
21 agencies and school districts for those costs shall be made pursuant
22 to Part 7 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the claim for
24 reimbursement does not exceed one million dollars (\$1,000,000),
25 reimbursement shall be made from the State Mandates Claims
26 Fund.

27 SEC. 5. *Section 1 of this act shall only become operative if*
28 *Senate Bill 1737 is enacted and becomes operative.*

29 SEC. 6. *The funding provided for in Section 1 of this act may*
30 *also be used for the purposes of implementing the provisions of*
31 *Senate Bill 1737 of the 2003–04 Regular Session.*

